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EXAMINER	
HAND, MELANIE JO	

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3761	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/800,093	KELLY, WILLIAM G.F.	
	Examiner	Art Unit	
	MELANIE J. HAND	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 February 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 27, 2008 has been entered.

Response to Amendment

2. The declaration under 37 CFR 1.132 filed February 27, 2008 is sufficient to overcome the rejection of claims 1-28 based upon the Fell and Goodman references in combination.

Response to Arguments

3. Applicant's arguments, see Remarks, filed February 27, 2008, with respect to the rejection(s) of claim(s) 1-28 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly found prior art reference.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-12, 17-20, 22-25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wada et al (EP 951,889 A1) in view of Goodman et al (WO 93/12749 A1)

6.

With respect to **claim 1:** Wada teaches a sanitary napkin 1 comprising an apertured film body-facing cover layer in the form of topsheet 2 having apertures 6. Wada teaches a diameter for the apertures, but does not teach an open area for the topsheet 2. Goodman teaches an apertured film 500 wherein the uppermost lamina 501 has a photoetched area (total area of boundaries and film material between apertures) percentage of about 65-95%, i.e. the open area percentage defines the remainder of the area, or between 5-35% of the total area of the lamina. Goodman teaches that this open area percentage reduces the glossy appearance of the film to produce and more fiber-like and tactile impression, as well as enhancing fluid transfer properties, therefore it would be obvious to one of ordinary skill in the art to modify the article of Wada so as to have a bodyside liner that is an apertured film with an open area percentage as taught by Goodman to provide a more fiber-like appearance and enhance fluid transfer properties. The combined teaching of Wada and Goodman thus renders the limitation "having an open area between about 20% and about 30%" obvious.

Wada teaches an absorbent system in the form of core 4 adjacent said cover layer 2 for receiving liquid therefrom and a fluid impermeable garment facing layer in the form of liquid-impervious backsheet 3. The napkin has a color difference between the apertured topsheet and the underlying tissue paper 9 of 0.2-1, i.e. they are essentially the same color. Wada teaches partially coloring the topsheet 2 as well as teaching that other colors can be used. These variations of the percentage of topsheet area colored and the colors used together are capable of yielding a napkin having a masking value of less than 115,000. Wada teaches white and blue as examples and teaches partial coloring of the apertured cover layer. Therefore, while Wada does not explicitly teach a masking value of less than 115,000, one of ordinary skill in the art would be motivated to try different amounts of coloring on the white or blue topsheet or different

hues of the blue or white colors so as to arrive at the claimed masking value with a reasonable expectation of success to provide an article with improved aesthetic appearance as suggested by Wada. If there is a design need or a market pressure to solve a problem (provide a sanitary napkin with an apertured topsheet and underlying tissue paper having a color difference of 0.2-1 to improve aesthetic appearance), and there are a finite number of identified, predictable solutions (i.e. a topsheet having a masking value less than 115,000 while also having a color difference with the tissue paper of 0.2-1), a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation.

As to the limitation "an average fluid penetration time of less than about 45 seconds", the combined teaching of Wada and Goodman meets all of the limitations of claim 1 as to an apertured topsheet having an open area between 20-30%, which are the limitations that directly affect fluid penetration time. Therefore the combined teaching of Wada and Goodman renders the limitation "an average fluid penetration time of less than about 45 seconds" obvious.

As to the limitation "an average rewet of less than about .05 grams", the combined teaching of Wada and Goodman meets all of the limitations of claim 1 as to an apertured topsheet having the claimed percent open area and an absorbent system. Wada discloses a thermoplastic resin sheet for the topsheet and a mixture of fluff pulp and superabsorbent, a mixture that is also disclosed by applicant for the claimed absorbent system. Therefore, the article of the combined teaching of Wada and Goodman necessarily has an average rewet within the claimed range. With regard to the limitation "according to the test procedure described herein", test procedures do not alter the inherent properties of a material or article, thus this limitation is given little patentable weight herein. Further, since the article of the combined

teaching of Wada and Goodman meets all of the limitations of claim 1, the article will still necessarily also meet the limitations using the test procedure disclosed by applicant.

With respect to **claim 2:** Wada teaches an absorbent system in the form of core 4 adjacent said cover layer 2 for receiving liquid therefrom and a fluid impermeable garment facing layer in the form of liquid-impervious backsheet 3. The napkin has a color difference between the apertured topsheet and the underlying tissue paper 9 of 0.2-1, i.e. they are essentially the same color. Wada teaches partially coloring the topsheet 2 as well as teaching colors, which together are capable of yielding a napkin having a masking value of less than 100,000. Wada teaches white and blue as examples and teaches partial coloring of the apertured cover layer. therefore, while Wada does not explicitly teach a masking value of less than 100,000, one of ordinary skill in the art would be motivated to try different amounts of coloring on the white or blue topsheet so as to arrive at the claimed masking value with a reasonable expectation of success to provide an article with improved aesthetic appearance as suggested by Wada. If there is a design need or a market pressure to solve a problem (provide a sanitary napkin with an apertured topsheet and underlying tissue paper having a color difference of 0.2-1 to improve aesthetic appearance), and there are a finite number of identified, predictable solutions (i.e. a topsheet having a masking value less than 100,000 while also having a color difference with the tissue paper of 0.2-1), a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation.

With respect to **claim 3:** Wada teaches an absorbent system in the form of core 4 adjacent said cover layer 2 for receiving liquid therefrom and a fluid impermeable garment facing layer in the

form of liquid-impervious backsheet 3. The napkin has a color difference between the apertured topsheet and the underlying tissue paper 9 of 0.2-1, i.e. they are essentially the same color. Wada teaches partially coloring the topsheet 2 as well as teaching colors, which together are capable of yielding a napkin having a masking value of less than 90,000. Wada teaches white and blue as examples and teaches partial coloring of the apertured cover layer. therefore, while Wada does not explicitly teach a masking value of less than 90,000, one of ordinary skill in the art would be motivated to try different amounts of coloring on the white or blue topsheet so as to arrive at the claimed masking value with a reasonable expectation of success to provide an article with improved aesthetic appearance as suggested by Wada. If there is a design need or a market pressure to solve a problem (provide a sanitary napkin with an apertured topsheet and underlying tissue paper having a color difference of 0.2-1 to improve aesthetic appearance), and there are a finite number of identified, predictable solutions (i.e. a topsheet having a masking value less than 90,000 while also having a color difference with the tissue paper of 0.2-1), a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation.

With respect to **claim 4:** Wada teaches an absorbent system in the form of core 4 adjacent said cover layer 2 for receiving liquid therefrom and a fluid impermeable garment facing layer in the form of liquid-impervious backsheet 3. The napkin has a color difference between the apertured topsheet and the underlying tissue paper 9 of 0.2-1, i.e. they are essentially the same color. Wada teaches partially coloring the topsheet 2 as well as teaching colors, which together are capable of yielding a napkin having a masking value of less than 85,000. Wada teaches white and blue as examples and teaches partial coloring of the apertured cover layer. therefore, while

Wada does not explicitly teach a masking value of less than 85,000, one of ordinary skill in the art would be motivated to try different amounts of coloring on the white or blue topsheet so as to arrive at the claimed masking value with a reasonable expectation of success to provide an article with improved aesthetic appearance as suggested by Wada. If there is a design need or a market pressure to solve a problem (provide a sanitary napkin with an apertured topsheet and underlying tissue paper having a color difference of 0.2-1 to improve aesthetic appearance), and there are a finite number of identified, predictable solutions (i.e. a topsheet having a masking value less than 85,000 while also having a color difference with the tissue paper of 0.2-1), a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation.

With respect to **claim 5:** As to the limitation "an average fluid penetration time of less than about 40 seconds", the combined teaching of Wada and Goodman meets all of the limitations of claim 5 as to an apertured topsheet having an open area between 20-30%, which are the limitations that directly affect fluid penetration time. Therefore the combined teaching of Wada and Goodman renders the limitation "an average fluid penetration time of less than about 40 seconds" obvious. The motivation to modify the article of Wada so as to have an open area percentage within the claimed range is stated *supra* with respect to claim 1.

With respect to **claim 6:** As to the limitation "an average fluid penetration time of less than about 35 seconds", the combined teaching of Wada and Goodman meets all of the limitations of claim 5 as to an apertured topsheet having an open area between 20-30%, which are the limitations that directly affect fluid penetration time. Therefore the combined teaching of Wada and

Goodman renders the limitation "an average fluid penetration time of less than about 35 seconds" obvious. The motivation to modify the article of Wada so as to have an open area percentage within the claimed range is stated *supra* with respect to claim 1.

With respect to **claim 7:** The absorbent system 4 of Wada includes a superabsorbent material in the form of superabsorbent particles 8. ('889, ¶0013)

With respect to **claim 8:** The absorbent system 4 of Wada includes a blend of cellulosic fibers and superabsorbent material 8. ('889, ¶0013)

With respect to **claim 9:** The absorbent system 4 comprises a first absorbent layer in the form of tissue paper 9 and a second absorbent layer. The second absorbent layer of Wada contains a blend of superabsorbent and fluff pulp as is disclosed for the claimed second layer.

Wada does not teach that said second absorbent layer of Wada has a basis weight of from about 100 g/m^2 to about 700 g/m^2. However, since Wada discloses the same blend of superabsorbent polymer and fluff pulp disclosed by applicant, it would be obvious to one of ordinary skill in the art to try different poropertions of superabsorbent and fluff pulp to arrive at the claimed basis weight, as it would be well within the abilities of one of ordinary skill in the art to know how to modify the layer of Wada to obtain a basis weight within the claimed range. The absorbent system of Wada has a bottom layer of pulp (i.e. the portion of tissue 9 that underlies the core 4), a middle layer of pulp intermixed with superabsorbent polymer, and a top layer containing at least some pulp, i.e. the portion of tissue 9 between the core 4 and topsheet 2.

With regard to the limitation "has been air-laid as a bottom layer of pulp, a middle layer of pulp intermixed with superabsorbent polymer, and a top layer containing at least some pulp",

such limitation constitutes product-by-process claim language. An absorbent system airlaid so as to have these layers as claimed is identical to the system taught by wada having those same layers as claimed. Therefore the combined teaching of wada and Goodman renders the limitation "has been air-laid as a bottom layer of pulp, a middle layer of pulp intermixed with superabsorbent polymer, and a top layer containing at least some pulp" obvious.

With respect to **claim 10**: Wada does not teach that said second absorbent layer has a density of more than about 0.25 g/cc. However, since Wada discloses the same blend of superabsorbent polymer and fluff pulp disclosed by applicant, it would be obvious to one of ordinary skill in the art to try different proportions of superabsorbent and fluff pulp to arrive at the claimed density, as it would be well within the skill of one of ordinary skill in the art to know how to modify the layer of Wada to obtain a density within the claimed range. The absorbent system of Wada has a bottom layer of pulp (i.e. the portion of tissue 9 that underlies the core 4), a middle layer of pulp intermixed with superabsorbent polymer, and a top layer containing at least some pulp, i.e. the portion of tissue 9 between the core 4 and topsheet 2.

With respect to **claim 11:** Wada does not teach that said second absorbent layer has a density of from about 0.3 g/cc to about 0.5 g/cc. However, since Wada discloses the same blend of superabsorbent polymer and fluff pulp disclosed by applicant, it would be obvious to one of ordinary skill in the art to try different proportions of superabsorbent and fluff pulp to arrive at the claimed density, as it would be well within the abilities of one of ordinary skill in the art to know how to modify the layer of Wada to obtain a density within the claimed range. The absorbent system of Wada has a bottom layer of pulp (i.e. the portion of tissue 9 that underlies the core 4),

a middle layer of pulp intermixed with superabsorbent polymer, and a top layer containing at least some pulp, i.e. the portion of tissue 9 between the core 4 and topsheet 2.

With respect to **claim 12:** Wada does not teach that said second absorbent layer has a density of from about from about 0.3 g/cc to about 0.45 g/cc. However, since Wada discloses the same blend of superabsorbent polymer and fluff pulp disclosed by applicant, it would be obvious to one of ordinary skill in the art to try different proportions of superabsorbent and fluff pulp to arrive at the claimed density, as it would be well within the abilities of one of ordinary skill in the art to know how to modify the layer of Wada to obtain a density within the claimed range. The absorbent system of Wada has a bottom layer of pulp (i.e. the portion of tissue 9 that underlies the core 4), a middle layer of pulp intermixed with superabsorbent polymer, and a top layer containing at least some pulp, i.e. the portion of tissue 9 between the core 4 and topsheet 2.

With respect to **claim 17:** Wada does not teach that said second absorbent layer has a basis weight of from about 150 g/m^2 to about 350 g/m^2. However, since Wada discloses the same blend of superabsorbent polymer and fluff pulp disclosed by applicant, it would be obvious to one of ordinary skill in the art to try different proportions of superabsorbent and fluff pulp to arrive at the claimed basis weight, as it would be well within the abilities of one of ordinary skill in the art to know how to modify the layer of Wada to obtain a basis weight within the claimed range. The absorbent system of Wada has a bottom layer of pulp (i.e. the portion of tissue 9 that underlies the core 4), a middle layer of pulp intermixed with superabsorbent polymer, and a top layer containing at least some pulp, i.e. the portion of tissue 9 between the core 4 and topsheet 2.

With respect to **claim 18:** Wada does not teach that said second absorbent layer has a basis weight of from about 200 g/m^2 to about 300 g/m^2. However, since Wada discloses the same blend of superabsorbent polymer and fluff pulp disclosed by applicant, it would be obvious to one of ordinary skill in the art to try different proportions of superabsorbent and fluff pulp to arrive at the claimed basis weight, as it would be well within the abilities of one of ordinary skill in the art to know how to modify the layer of Wada to obtain a basis weight within the claimed range. The absorbent system of Wada has a bottom layer of pulp (i.e. the portion of tissue 9 that underlies the core 4), a middle layer of pulp intermixed with superabsorbent polymer, and a top layer containing at least some pulp, i.e. the portion of tissue 9 between the core 4 and topsheet 2.

With respect to **claim 19:** Wada does not teach that said second absorbent layer has a basis weight of about 250 g/m^2. However, since Wada discloses the same blend of superabsorbent polymer and fluff pulp disclosed by applicant, it would be obvious to one of ordinary skill in the art to try different proportions of superabsorbent and fluff pulp to arrive at the claimed basis weight, as it would be well within the abilities of one of ordinary skill in the art to know how to modify the layer of Wada to obtain a basis weight within the claimed range. The absorbent system of Wada has a bottom layer of pulp (i.e. the portion of tissue 9 that underlies the core 4), a middle layer of pulp intermixed with superabsorbent polymer, and a top layer containing at least some pulp, i.e. the portion of tissue 9 between the core 4 and topsheet 2.

With respect to **claim 20:** With regard to the limitation "wherein said first absorbent layer is air laid over said second absorbent layer", such limitation constitutes product-by-process claim language. An absorbent system wherein the first absorbent layer is airlaid over the second

absorbent layer as claimed is identical to the system taught by Wada having those same layers, i.e. a first absorbent tissue layer laid over a second absorbent layer having SAP and fluff. Therefore the combined teaching of Wada and Goodman renders the limitation "wherein said first absorbent layer is air laid over said second absorbent layer" obvious.

With respect to **claim 22:** The first absorbent layer taught by Wada comprises tissue paper 9, i.e. wood pulp, a material disclosed for the claimed first absorbent layer. Thus the first absorbent layer of Wada necessarily comprises a material having a density in the range of from about 0.04 to 0.05 g/cc.

With respect to **claim 23:** The first absorbent layer taught by Wada comprises tissue paper 9, i.e. wood pulp, a material disclosed for the claimed first absorbent layer. Thus the first absorbent layer of Wada necessarily comprises a material having a basis weight in the range of from about 80 g/m^2 to about 110 g/m^2.

With respect to **claim 24:** Wada does not teach that said first absorbent layer has a thickness in the range from about 2 mm to about 3 mm. However, since Wada teaches similar materials to those disclosed for the claimed first absorbent layer, it would be obvious to one of ordinary skill in the art to modify the article of Wada so as to have a thickness within the claimed range to provide an article that functions properly and sufficiently as an absorbent article.

With respect to **claim 25:** The combined teaching of Wada and Goodman does not disclose a second absorbent layer including from about 5 weight percent to about 60 weight percent superabsorbent polymer. Applicant has not specified what the weight percent recited in claim 14

is based upon, therefore it is interpreted herein as the weight percent of the second absorbent layer.

Wilson teaches an absorbent layer having superabsorbent mixed with fluff pulp similar to the second layer disclosed by Wada. Wilson teaches that in a typical absorbent article, the superabsorbent is present in an amount between 30-70 wt% and the fibers of the fiber matrix the superabsorbent is embedded in are present in an amount of between 70-30 wt%. ('492, ¶0042) Based upon the weight percents given by Wilson for the fiber and the superabsorbent, Wilson is teaching that the typical article referred to consists of only the superabsorbent and the fiber matrix (i.e. the second layer of Wada is an absorbent article itself). Thus, it would be obvious to one of ordinary skill in the art to modify the article of the combined teaching of Wada and Goodman such that the superbasorbent is present in an amount of 30-70 wt% based upon weight of the second absorbent layer as taught by Wilson with a reasonable expectation of success to ensure that the article absorbs fluid as intended. This range overlaps and renders obvious the claimed range of from about 5 wt% to about 60 wt %.

With respect to **claim 28:** Wada teaches a sanitary napkin 1 comprising an apertured film body-facing cover layer in the form of topsheet 2 having apertures 6. The first absorbent layer taught by Wada comprises tissue paper 9, i.e. wood pulp, a material disclosed for the claimed first absorbent layer. Thus the first absorbent layer of Wada necessarily comprises a material having a basis weight in the range of from about 80 g/m^2 to about 110 g/m^2.

Wada teaches a diameter for the apertures, but does not teach an open area for the topsheet 2. Goodman teaches an apertured film 500 wherein the uppermost lamina 501 has a photoetched area (total area of boundaries and film material between apertures) percentage of about 65-95%, i.e. the open area percentage defines the remainder of the area, or between 5-

35% of the total area of the lamina. Goodman teaches that this open area percentage reduces the glossy appearance of the film to produce and more fiber-like and tactile impression, as well as enhancing fluid transfer properties, therefore it would be obvious to one of ordinary skill in the art to modify the article of Wada so as to have a bodyside liner that is an apertured film with an open area percentage as taught by Goodman to provide a more fiber-like appearance and enhance fluid transfer properties. The combined teaching of Wada and Goodman thus renders the limitation "having an open area between about 20% and about 30%" obvious.

Wada does not teach that said second absorbent layer has a basis weight of from about 150 g/m^2 to about 350 g/m^2. However, since Wada discloses the same blend of superabsorbent polymer and fluff pulp disclosed by applicant, it would be obvious to one of ordinary skill in the art to try different proportions of superabsorbent and fluff pulp to arrive at the claimed basis weight, as it would be well within the abilities of one of ordinary skill in the art to know how to modify the layer of Wada to obtain a basis weight within the claimed range. The absorbent system of Wada has a bottom layer of pulp (i.e. the portion of tissue 9 that underlies the core 4), a middle layer of pulp intermixed with superabsorbent polymer, and a top layer containing at least some pulp, i.e. the portion of tissue 9 between the core 4 and topsheet 2.

With regard to the limitation "has been air-laid as a bottom layer of pulp, a middle layer of pulp intermixed with superabsorbent polymer, and a top layer containing at least some pulp", such limitation constitutes product-by-process claim language. An absorbent system airlaid so as to have these layers as claimed is identical to the system taught by Wada having those same layers as claimed. Therefore the combined teaching of Wada and Goodman renders the limitation "has been air-laid as a bottom layer of pulp, a middle layer of pulp intermixed with superabsorbent polymer, and a top layer containing at least some pulp" obvious.

Wada teaches an absorbent system in the form of core 4 adjacent said cover layer 2 for receiving liquid therefrom and a fluid impermeable garment facing layer in the form of liquid-impervious backsheet 3. The napkin has a color difference between the apertured topsheet and the underlying tissue paper 9 of 0.2-1, i.e. they are essentially the same color. Wada teaches partially coloring the topsheet 2 as well as teaching colors, which together are capable of yielding a napkin having a masking value of less than 85,000. Wada teaches white and blue as examples and teaches partial coloring of the apertured cover layer. therefore, while Wada does not explicitly teach a masking value of less than 85,000, one of ordinary skill in the art would be motivated to try different amounts of coloring on the white or blue topsheet so as to arrive at the claimed masking value with a reasonable expectation of success to provide an article with improved aesthetic appearance as suggested by Wada. If there is a design need or a market pressure to solve a problem (provide a sanitary napkin with an apertured topsheet and underlying tissue paper having a color difference of 0.2-1 to improve aesthetic appearance), and there are a finite number of identified, predictable solutions (i.e. a topsheet having a masking value less than 85,000 while also having a color difference with the tissue paper of 0.2-1), a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation.

As to the limitation "an average fluid penetration time of less than about 35 seconds", the combined teaching of Wada and Goodman meets all of the limitations of claim 1 as to an apertured topsheet having an open area between 20-30%, which are the limitations that directly affect fluid penetration time. Therefore the combined teaching of Wada and Goodman renders the limitation "an average fluid penetration time of less than about 45 seconds" obvious.

As to the limitation "an average rewet of less than about .05 grams", the combined teaching of Wada and Goodman meets all of the limitations of claim 1 as to an apertured topsheet having the claimed percent open area and an absorbent system. Wada discloses a thermoplastic resin sheet for the topsheet and a mixture of fluff pulp and superabsorbent, a mixture that is also disclosed by applicant for the claimed absorbent system. Therefore, the article of the combined teaching of Wada and Goodman necessarily has an average rewet within the claimed range.

With regard to the limitation "according to the test procedure described herein", test procedures do not alter the inherent properties of a material or article, thus this limitation is given little patentable weight herein. Further, since the article of the combined teaching of Wada and Goodman meets all of the limitations of claim 1, the article will still necessarily also meet the limitations using the test procedure disclosed by applicant.

7. Claims 14-16 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wada et al ('889) in view of Goodman et al ('749) as applied to claim 9 above, and further in view of Wilson (U.S. Patent Application Publication No. 2002/0193492).

With respect to **claim 14:** The combined teaching of Wada and Goodman does not disclose a second absorbent layer including from about 20 weight percent to about 55 weight percent superabsorbent polymer. Applicant has not specified what the weight percent recited in claim 14 is based upon, therefore it is interpreted herein as the weight percent of the second absorbent layer. Wilson teaches an absorbent layer having superabsorbent mixed with fluff pulp similar to the second layer disclosed by Wada. Wilson teaches that in a typical absorbent article, the superabsorbent is present in an amount between 30-70 wt% and the fibers of the fiber matrix

the superabsorbent is embedded in are present in an amount of between 70-30 wt%. ('492, ¶0042) Based upon the weight percents given by Wilson for the fiber and the superabsorbent, Wilson is teaching that the typical article referred to consists of only the superabsorbent and the fiber matrix (i.e. the second layer of Wada is an absorbent article itself). Thus, it would be obvious to one of ordinary skill in the art to modify the article of the combined teaching of Wada and Goodman such that the superbasorbent is present in an amount of 30-70 wt% based upon weight of the second absorbent layer as taught by Wilson with a reasonable expectation of success to ensure that the article absorbs fluid as intended. This range overlaps and renders obvious the claimed range of from about 20 wt% to about 55 wt %.

With respect to **claim 15:** The combined teaching of Wada and Goodman does not disclose a second absorbent layer including from about 30 weight percent to about 45 weight percent superabsorbent polymer. Applicant has not specified what the weight percent recited in claim 14 is based upon, therefore it is interpreted herein as the weight percent of the second absorbent layer. Wilson teaches an absorbent layer having superabsorbent mixed with fluff pulp similar to the second layer disclosed by Wada. Wilson teaches that in a typical absorbent article, the superabsorbent is present in an amount between 30-70 wt% and the fibers of the fiber matrix the superabsorbent is embedded in are present in an amount of between 70-30 wt%. ('492, ¶0042) Based upon the weight percents given by Wilson for the fiber and the superabsorbent, Wilson is teaching that the typical article referred to consists of only the superabsorbent and the fiber matrix (i.e. the second layer of Wada is an absorbent article itself). Thus, it would be obvious to one of ordinary skill in the art to modify the article of the combined teaching of Wada and Goodman such that the superbasorbent is present in an amount of 30-70 wt% based upon weight of the second absorbent layer as taught by Wilson with a reasonable expectation of

success to ensure that the article absorbs fluid as intended. This range overlaps and renders obvious the claimed range of from about 30 wt% to about 45 wt %.

With respect to **claim 16:** The combined teaching of Wada and Goodman does not disclose a second absorbent layer including about 40 weight percent superabsorbent polymer. Applicant has not specified what the weight percent recited in claim 14 is based upon, therefore it is interpreted herein as the weight percent of the second absorbent layer. Wilson teaches an absorbent layer having superabsorbent mixed with fluff pulp similar to the second layer disclosed by Wada. Wilson teaches that in a typical absorbent article, the superabsorbent is present in an amount between 30-70 wt% and the fibers of the fiber matrix the superabsorbent is embedded in are present in an amount of between 70-30 wt%. ('492, ¶0042) Based upon the weight percents given by Wilson for the fiber and the superabsorbent, Wilson is teaching that the typical article referred to consists of only the superabsorbent and the fiber matrix (i.e. the second layer of Wada is an absorbent article itself). Thus, it would be obvious to one of ordinary skill in the art to modify the article of the combined teaching of Wada and Goodman such that the superbasorbent is present in an amount of 30-70 wt% based upon weight of the second absorbent layer as taught by Wilson with a reasonable expectation of success to ensure that the article absorbs fluid as intended. This range overlaps and renders obvious the claimed weight percent of superabsorbent, i.e. about 40 wt %.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wada et al ('889) in view of Goodman et al ('749) as applied to claim 20 above, and further in view of Shelton et al (U.S. Patent No. 3,684,649).

With respect to **claim 21:** The combined teaching of Wada and Goodman teaches that the first absorbent layer comprises tissue, but does not explicitly teach that said first absorbent layer comprises thermoplastic fibers. Shelton teaches a resin-impregnated tissue material to overlie various woody substrates, wherein "various woody substrates" includes, e.g. particleboard assembled from wood fibers. Since the second absorbent layer of Wada over which first layer lies is also assembled from wood fibers, the tissue overlay taught by Shelton would be suitable for the first absorbent layer taught by Wada overlying a layer of wood fibers. Shelton teaches that it is known in the art of manufacturing overlaid wood products to utilize tissue material impregnated with thermoplastic resin fibers to impart a degree of water and wear resistance as desired that functions to preserve the structure and function of a wood substrate below the tissue material. Therefore, it would be obvious to one of ordinary skill in the art to modify the article of the combined teaching of Wada and Goodman such that the first absorbent tissue layer contains thermoplastic fibers as taught by Shelton to impart a degree of water resistance to protect the structural integrity of the second absorbent layer below so that the second layer can perform its intended function.

9. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wada et al ('889) in view of Goodman et al ('749) as applied to claim 26 above, and further in view of Glasgow et al (U.S. Patent No. 6,395,956)

With respect to **claim 26:** Neither Wada nor Goodman teaches a sanitary napkin thickness. Glasgow teaches a sanitary napkin and teaches that ultra-thin articles having thickness less than 5 mm are known in the art and provide improved flexibility during wear. Therefore it would be obvious to one of ordinary skill in the art to modify the article of the combined teaching of

Wada and Goodman such that the instant napkin has a thickness of less than 5 mm as taught by Glasgow to provide a napkin having increased flexibility for increased comfort during wear. This range overlaps and renders obvious the claimed range of less than 3 mm.

With respect to **claim 27:** Neither Wada nor Goodman teaches a sanitary napkin thickness. Glasgow teaches a sanitary napkin and teaches that ultra-thin articles having thickness less than 5 mm are known in the art and provide improved flexibility during wear. Therefore it would be obvious to one of ordinary skill in the art to modify the article of the combined teaching of Wada and Goodman such that the instant napkin has a thickness of less than 5 mm as taught by Glasgow to provide a napkin having increased flexibility for increased comfort during wear. This range overlaps and renders obvious the claimed thickness of about 2.8 mm.

Allowable Subject Matter

10. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for Indicating Allowable Subject Matter

11. The following is a statement of reasons for the indication of allowable subject matter: The combined teaching of Wada and Goodman is the closest prior art of record, but does not teach or suggest a middle layer of the instant second absorbent layer wherein the middle layer comprises a first middle layer adjacent the bottom layer and a second middle layer adjacent the top layer. While the previously applied Fell reference teaches this limitation of claim 13, it would not be obvious to one of ordinary skill in the art to modify the middle layer of pulp and

superabsorbent of the second absorbent layer of the combined teaching of Wada and Goodman so as to arrive at the claimed napkin having a middle layer of a second absorbent layer that comprises two physically separate first and second middle layers as claimed or as taught by Fell, as such a modification would destroy the function of the middle layer of the second absorbent layer of Wada and the article itself, as a layer of superabsorbent particulate alone would not be able to absorb exudate sufficiently and would cause staining and leakage.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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